IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 476 OF 2006.

State of Maharashtra. ... Appellant.

Versus.

Subhadra S.Gaikwad & another. ... Respondents.

Mrs.G.P.Mulekar, A.G.P. for the Appellant.

Shri Uday Warunjikar for the Respondents.

CORAM : ABHAY S.OKA, J.

DATED : 28th July, 2006.

P.C.:

1. Shri Warunjikar appears for the Respondents and states that his appearance is shown for both the Respondents. He states that he is not appearing for both the Respondents and he has already returned the papers to both the Respondents to enable them to engage some other Advocate. He states that he is unable to appear in the matter. He states that Court notice may be issued to both the Respondents.

2. It is not necessary to issue Court notice as none of the Respondents had filed any caveat. Even this Court has not issued any notice before admission. As Shri Warunjikar states that an intimation is duly served by him to both the Respondents, he is allowed to withdraw his appearance.

3. Heard the learned A.G.P. for the Appellant.

The Second Appeal is admitted on the following substantial questions of law:

i) Whether the Appellate Court committed an error by holding that the original Plaintiff has perfected his title by adverse possession inasmuch as notice of resumption of land under section 84(c) of the Bombay Tenancy and Agricultural Lands Act, 1948 was already issued to the Plaintiff?

ii) Whether the Appellate Court completely ignored the fact that for claiming perfection of title by adverse possession against Government suit was filed in the year 1988 when adverse possession was claimed from 1972 ?

iii) Whether the Appellate Court was justified in granting declaration notwithstanding the pendency of the proceedings under section 84(c) of the Bombay Tenancy and Agricultural Lands Act, 1948 ?

3. Printing is dispensed with. The Appellant is directed to file private paper book along with sufficient number of copies thereof within a period of one year from today. If the paper book is not filed within the stipulated period, the Appeal will stand

dismissed for want of prosecution without further reference to the Court.

3. In addition to service through Court, the Advocate for the Appellant is directed to serve private notice to the Respondents by Registered Post A.D. and/or Speed Post A.D. and/or by hand delivery. Hamdast allowed.

Judge.